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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,980	01/03/2005	Peder Oscar Andersen	60275-USA	2890

48219 7590 09/30/2010
PATENT ADMINISTRATOR
FMC CORPORATION
1735 MARKET STREET
PHILADELPHIA, PA 19103

EXAMINER

SHEIKH, HUMERA N

ART UNIT	PAPER NUMBER
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1615

NOTIFICATION DATE	DELIVERY MODE
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09/30/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

barbara.cherry@fmc.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/509,980	Applicant(s) ANDERSEN ET AL.	
	Examiner Humera N. Sheikh	Art Unit 1615	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: none.
 Claim(s) objected to: none.
 Claim(s) rejected: 50-55,70,73,82,84,87,88,91,92,96-102 and 110-112.
 Claim(s) withdrawn from consideration: 85,86,93,94,103,113,114 and 119.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Humera N. Sheikh/
 Primary Examiner, Art Unit 1615

Continuation of 3. NOTE: The claims newly added (120/121) introduce limitations not previously presented during prosecution and thus, change the scope of the originally-filed claims, requiring further consideration and/or search..

Continuation of 5. Applicant's reply has overcome the following rejection(s): The 35 USC 103(a) rejection of Okamura et al. (USPN 5,942,266) in view of Gåserød et al. (WO 99/02252) and Lee et al. (EP 0480729 A1).

Continuation of 11. does NOT place the application in condition for allowance because:
Applicant's arguments relating to the 35 USC 103(a) rejection of Shigeno (USPN 5,385,737) in view of Gåserød et al. (WO 99/02252) and Lee et al. (EP 0480729 A1) have been considered. Applicant argument that "Shigeno is directed to macrocapsules whereas Lee is directed to a distinctly different freeze-dried matrix that exists in the powdered state as a final product" has been considered but was not persuasive. The primary reference of Shigeno clearly recognizes and teaches the use of seamless capsules as are presently claimed by Applicant. Thus, it is not incumbent that the secondary reference of Lee also be directed to seamless capsules, as the primary reference initially teaches this aspect. Moreover, note in particular that Lee is also directed to microencapsulated emulsions. The fact that the emulsions occur as in powdery state as a final product does not deter from the explicit teachings of Lee to utilize enteric/delayed-release coatings. As noted above, the primary reference initially teaches "seamless" capsules and thus, meet this limitation requirement of the present claims. Furthermore, the instant claims do not exclude the added step of freeze-drying an emulsion, as disclosed by Lee. Applicant further argues that "Neither Shigeno nor Lee teach seamless capsules that are oblong, oval or cylindrical". This argument has been considered but was not persuasive. With respect to the particular shape of the capsule (oval, oblong, cylindrical), it remains the position of the Examiner that this is a parameter that can be obtained via routine experimentation based on the desired or intended result. No patentability is seen in the particular shape of the capsule, which can be varied based on preference. Moreover, no unexpected results have been shown which would effect the function of the tablet as a result of its physical structure, shape or construction. With respect to the amount of oil employed, the determination of effective amounts is a routine-optimized variable. See *In re Aller* 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). The references in combination are sufficient to meet the claims as presently recited.

Applicant's arguments relating to the 35 USC 103(a) rejection of Okamura et al. (USPN 5,942,266) in view of Gåserød et al. (WO 99/02252) and Lee et al. (EP 0480729 A1) have been considered. Applicant argued, "Marmelo mucilage is a required feature in Okamura, whereas the present invention expressly excludes marmelo mucilage". This was found persuasive. Accordingly, this rejection has been withdrawn.

Applicant's arguments relating to the 35 USC 103(a) rejection of Ueda (USPN 4,702,921) in view of Gåserød et al. and Lee et al. have been considered but were not found persuasive. Applicant argues, "Ueda broadly discloses addition of oil but there is no teaching as to the criticality of the specific emulsion type in a seamless capsule containing large amounts of oil". This was not persuasive since the reference is nonetheless, suggestive of a capsule as claimed formed of calcium alginate membranes and filled with an oil material; the determination of suitable or effective amounts of oil being a routine-optimized variable.

Applicant's arguments relating to the Declaration under 37 CFR 1.132 have been noted. However, the Declaration has not been considered on the merits. See box #8 above.

Applicant's arguments relating to the nonstatutory obviousness-type double patenting rejection over claims 53-60 of copending Application No. 11/713,176 (now U.S. Patent No. 7,766,637) have been noted. The double-patenting rejection has been maintained herein until such time that a terminal disclaimer has been filed and/or the instant claims have been amended to such an extent so as to distinguish over the claims of the '176 application ('now '637 Patent).